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*Kevin L. Smith*

**CLERK**  
of the supreme court,  
court of appeals and  
tax court

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, Shade Ishola-Gbenla (Shade), appeals the trial court's grant of summary judgment to Appellee-Plaintiff, Gateway West Townhouse Association (Gateway).

We affirm.

## ISSUE

Shade presents one issue for our review, which we restate as: Whether the trial court erred when it granted summary judgment to Gateway.

## FACTS AND PROCEDURAL HISTORY

On October 25, 1999, Shade was conveyed real property known as 3977 Gateway Court, Indianapolis, Indiana, by quitclaim deed. In November 2000, Gateway, a co-owners association, sent Shade a Notice of Lien on the property for failure to pay eleven months of maintenance fee at a rate of thirty-two dollars per month. Shade believes that Huntington National Bank, the bank that held the mortgage for the real property, paid the amount of the purported lien at that time. On May 1, 2006, Gateway sent a notice to Shade claiming that Shade owed \$2,464 for maintenance fees as of May 1, 2006. On June 9, 2006, Gateway filed a Complaint naming Shade and Huntington National Bank as defendants and seeking to foreclose on the lien against Shade's property, or, in the alternative, seeking a judgment in the sum of \$2,464 against Shade. On June 30, 2006, Shade answered by denying that Gateway had any valid lien on the property or a valid claim for money judgment. On January 18, 2007, Gateway filed its Motion for Summary Judgment with designated materials in support. Its motion asked for the \$2,464 of maintenance fees allegedly owed and \$1,050 for attorney fees as provided for by the Declaration of Covenants and Restrictions

(Declaration) applicable to Shade's property. On February 12, 2007, Huntington National Bank filed its response to the Motion for Summary Judgment simply stating that it did not object to the claim. On February 14, 2007, Shade filed her response to the Motion for Summary Judgment. On June 25, 2007, Barry Stern (Stern), the director of Gateway, filed a motion to be added as a plaintiff. On July 16, 2007, Huntington National Bank filed an amended response asserting again that it did not object to Gateway's Motion for Summary Judgment, but clarified that it held the first priority protection for its mortgage should the property be sold to satisfy the debt owed to Gateway.

On August 14, 2007, the trial court held a hearing on Stern's motion to be added as a plaintiff and Gateway's Motion for Summary Judgment. At the hearing Gateway conceded that its lien would fail because it did not file the lien within the applicable statutory time frame. On August 30, 2007, the trial court denied Stern's motion, and on August 31, 2007, the trial court granted Gateway's Motion for Summary Judgment on its claim for damages awarding Gateway \$2,464 for the maintenance fees plus \$218 for interest thereon, and \$1,050 for attorney fees, for a total judgment of \$3,795.<sup>1</sup>

Shade now appeals. Additional facts will be provided as necessary.

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<sup>1</sup> We note that the three parts of the award identified in the trial court's judgment, maintenance fees, interest, and attorney fees, add up to \$3,732, as opposed to \$3,795, the total amount awarded to Gateway. However, Shade does not challenge the trial court's judgment for this reason.

## DISCUSSION AND DECISION

Shade argues that the trial court improperly awarded summary judgment to Gateway. Specifically, Shade contends that Gateway presented no evidence to the trial court supporting the amount of maintenance fees owed by Shade to Gateway besides Stern's self-serving affidavit. Further, she contends that she is owed an offset for damages inflicted upon her car by vandals.

Our applicable standard of review is that summary judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Ind. Trial Rule 56(C). In reviewing the trial court's ruling on summary judgment, this court stands in the shoes of the trial court, applying the same standards in deciding whether to affirm or reverse summary judgment. *Hendricks County Bd. Of Comm'rs v. Rieth-Riley Const. Co., Inc.*, 868 N.E.2d 844, 848 (Ind. Ct. App. 2007). Thus, on appeal, we must determine whether there is a genuine issue of material fact and whether the trial court has correctly applied the law. *Id.* In doing so, we consider all of the designated evidence in the light most favorable to the non-moving party. *Id.* The party appealing the grant of summary judgment has the burden of persuading this court that the trial court's ruling was improper. *Id.* Accordingly, the grant of summary judgment must be reversed if the record discloses an incorrect application of the law to the facts. *Id.*

A co-owners association may request a personal money judgment for unpaid association fees against the condominium or homeowner owner pursuant to Ind. Code § 32-25-6-3(d). *Harbours Condominium Ass'n, Inc. v. Hudson*, 852 N.E.2d 985, 989 (Ind. Ct.

App. 2006). Shade does not contend that Gateway did not have a claim for unpaid fees; rather, Shade claims that there was an issue of material fact as to how much was owed.

Gateway designated the Declaration as evidence in support of its claim for summary judgment. Relevant to Shade's assertion of trial court error, the Declaration provides:

Until the year beginning January, 1967[,] the annual assessment shall be Sixty Dollars (\$60.00) per Lot. From and after January 1, 1967[,] the annual assessment may be increased by vote of the Owners, as hereinafter provided, for the next succeeding two (2) years and at the end of each such period of two (2) years for each succeeding period of two (2) years.

(Appellant's App. p. 35). In addition, Gateway designated an affidavit from Stern contending that Stern was the Director of Gateway, that he was familiar with the books and records of Gateway, and that he knew Shade to be indebted to Gateway in the amount of \$2,464. In her response to Gateway's Motion for Summary Judgment, Shade designated a notice that was sent to her explaining that the current maintenance fee assessment was thirty-two dollars per month, and that the current balance due for the unit located at 3977 Gateway Court/Drive was \$2,464.

As for Shade's contention regarding Stern's self-serving affidavit, we have recently articulated the considerations involved when reviewing a motion for summary judgment based upon a self-serving affidavit by stating:

Summary judgment is inappropriate if a reasonable trier of fact could choose to disbelieve the movant's account of the facts. [] It is error to base summary judgment solely on a party's self-serving affidavit, when evidence before the court raises a genuine issue as to the affiant's credibility. [] Inconsistencies and evasive language within the movant's designated evidence may form a basis for denying summary judgment. When the facts are peculiarly in the knowledge of the movant's witnesses, there should be an opportunity to impeach them at trial, and their demeanor may be the most effect impeachment. []

*Insuremax Ins. Co. v. Bice*, 879 N.E.2d 1187, 1190 (Ind. Ct. App. 2008) (internal citations omitted). Here, Shade has presented no evidence disputing the credibility of Stern's affidavit, nor is there inconsistent or evasive language in Gateway's designated evidence. The Declaration, designated as evidence by Gateway, set the maintenance fees at sixty-dollars per year until 1967, and provided for potential rate increases every two years thereafter. The level of inflation that our economy has incurred since 1967 creates an inference that the sixty-dollar annual fee has increased substantially in the last forty years, an inference which tends to support Stern's affidavit. Moreover, Shade presented a notice that she was sent specifically stating that the current rate of maintenance fees charged by Gateway was thirty-two dollars per month.

As for Shade's contention that she is owed an offset for her delinquent maintenance fees, she states in her Appellant's Brief, "when Shade's vehicles were vandalized, Stern failed to cooperate with law enforcement during the investigation. Rather, Stern promised to pay to Shade the sum [of] \$960 for damages to the vehicles. According to Shade, Stern failed to pay the amount as he promised." (Appellant's Br. p. 6). Shade cites to no legal authority for imposing such an offset. Moreover, Shade did not advance any counterclaim for the damage to her cars in response to Gateway's Complaint. Therefore, we conclude that Shade's assertion of Stern's promise was irrelevant and properly ignored by the trial court.

Altogether, Shade has not persuaded us that the trial court's grant of summary judgment was improper.

#### CONCLUSION

For the foregoing reasons, we conclude that the trial court properly awarded summary judgment to Gateway.

Affirmed.

BAKER, C.J., and ROBB, J., concur.